

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

NATHANIEL J. WILLIAMS,
Plaintiff,

vs.

OFFICER YANNIS, et al.,
Defendants.

Case No. 2:12-cv-00194-KJD-GWF

**ORDER AND REPORT AND
RECOMMENDATION**

Application to Proceed in
Forma Pauperis (#1) and
Screening of Complaint

This matter comes before the Court on Plaintiff's Application to Proceed in Forma Pauperis (#1), filed on February 6, 2012.

BACKGROUND

Plaintiff alleges a violation of his civil rights by Officer Yannis, Officer Madison, and Attorney John Parris. On June 17, 2011, Plaintiff claims that he was walking down a street with his fiancé when Officer Yannis preformed a random stop and unlawfully searched and seized Plaintiff's backpack. Plaintiff alleges that the officer then handcuffed Plaintiff and asked him where all the stuff came from. Plaintiff claims that he responded "I don't know, I just got it from Starbucks." Plaintiff alleges that Officer Yannis then split him and his girlfriend up and fabricated a story creating probable cause. Plaintiff also alleges Officer Yannis and Officer Madison coerced a confession and committed perjury while on the stand.

Plaintiff further alleges that Officers Yannis and Madison agreed to recommend to the district attorney no habitual offender treatment and only one felony charge if Plaintiff cooperated and admitted to driving a white Plymouth and other facts. Plaintiff claims that after he fully cooperated, he was charged with fifteen felonies. Plaintiff further alleges that Officer Madison

1 showed Plaintiff's fiancé his jail phone calls, took her out to lunch and dinner, sexually harassed
 2 her, stalked her and propositioned her. Plaintiff alleges that Officer Madison's conduct caused his
 3 fiancé to have a miscarriage. Plaintiff alleges he has PTSD, bipolar and anxiety, all of which
 4 cripple him mentally. Plaintiff claims that he cannot sleep and has nightmares of his baby crying.
 5 Plaintiff also alleges that his trial attorney, John Parris, failed to effectively represent him. Plaintiff
 6 states that he told Mr. Parris the entire story and provided evidence to support his claims, but Mr.
 7 Parris did not investigate any leads, call any witnesses, file any motions, or gather any evidence in
 8 support of Plaintiff's case.

9 Plaintiff requests that his property be returned to him, that he be released from unlawful
 10 restraint and that all criminal charges be dismissed. Plaintiff further requests that charges be
 11 brought against the officers and his attorney for their conduct. Plaintiff also requests \$1 million in
 12 punitive damages, \$5 million in mental suffering compensation, and \$100,000 in monetary
 13 damages.

14 **DISCUSSION**

15 **I. Application to Proceed In Forma Pauperis**

16 Plaintiff filed this instant action and attached a financial affidavit to his application and
 17 complaint as required by 28 U.S.C. § 1915(a). Reviewing William's financial affidavit pursuant to
 18 28 U.S.C. § 1915, the Court finds that Plaintiff is unable to pre-pay the filing fee. As a result,
 19 Plaintiff's request to proceed in forma pauperis in federal court is granted.

20 **II. Screening the Complaint**

21 Federal courts must conduct a preliminary screening in any case in which a prisoner seeks
 22 redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C.
 23 § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that
 24 are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary
 25 relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),(2).

26 In addition to the screening requirements under § 1915A, pursuant to the PLRA, a federal
 27 court must dismiss a prisoner's claims, "if the allegation of poverty is untrue," or if the action "is
 28 frivolous or malicious," "fails to state a claim on which relief may be granted," or "seeks monetary

1 relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2). Dismissal of
 2 a complaint for failure to state a claim upon which relief may be granted is provided for in Federal
 3 Rule of Civil Procedure 12(b)(6), and the Court applies the same standard under Section 1915(e)(2)
 4 when reviewing the adequacy of a complaint or amended complaint.

5 Review under Fed. R. Civ. P. 12(b)(6) is essentially a ruling on a question of law. *See*
 6 *Chappel v. Laboratory Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure
 7 to state a claim is proper only if it is clear that the plaintiff cannot prove any set of facts in support
 8 of the claim that would entitle him or her to relief. *See Morley v. Walker*, 175 F.3d 756, 759 (9th
 9 Cir. 1999). In making this determination, the Court takes as true all allegations of material fact
 10 stated in the complaint, and the Court construes them in the light most favorable to the plaintiff.
 11 *See Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations in a *pro se* complaint
 12 are held to less stringent standards than formal pleadings drafted by lawyers. *See Hughes v. Rowe*,
 13 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972) (*per curiam*). While the
 14 standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide
 15 more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1964-
 16 1965 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.*, *See*
 17 *Papasan v. Allain*, 478 U.S. 265, 286 (1986).

18 All or part of a complaint filed by a prisoner may therefore be dismissed *sua sponte* if the
 19 prisoner’s claims lack an arguable basis either in law or in fact. This includes claims based on legal
 20 conclusions that are untenable (*e.g.* claims against defendants who are immune from suit or claims
 21 of infringement of a legal interest which clearly does not exist), as well as claims based on fanciful
 22 factual allegations (*e.g.* fantastic or delusional scenarios). *See Neitzke v. Williams*, 490 U.S. 319,
 23 327-28 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

24 **III. Instant Complaint**

25 Plaintiff alleges claims of illegal search and seizure, due process, and ineffective assistance
 26 of counsel. Each of these claims appear to be inextricably intertwined with Plaintiff’s state court
 27 case and appear to be an appeal of his state court conviction. United States District Courts do not
 28 have jurisdiction to hear appeals from state trial court rulings. *See, e.g., Rooker v. Fidelity Trust*

1 *Co.*, 263 U.S. 413 (1923); *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir.2003). The
2 Rooker–Feldman doctrine prevents the Court from considering claims that amount to a review of
3 the state court’s ruling. The Rooker–Feldman doctrine stems from two cases recognizing that
4 under Article III of the Constitution Congress controls the jurisdiction of the “inferior Courts” it
5 creates. *See* U.S. Const. art. III, § 1. In both of those cases, parties who had lost in state court
6 attempted to invoke the jurisdiction of the United States District Court to appeal the state-court
7 rulings. In both cases, the federal statutes applicable at the respective times did not give the United
8 States District Court appellate jurisdiction over the respective controversies. *See D.C. Ct.App. v.*
9 *Feldman*, 460 U.S. 462, 476–79 (1983) (holding that denial of admission to practice law was a
10 judicial matter, not an administrative one, making any federal jurisdiction appellate, not original,
11 and therefore the avenue for review of a ruling of the D.C. Court of Appeals was not to the United
12 States District Court, but to the United States Supreme Court); *Rooker v. Fidelity Trust Co.*, 263
13 U.S. 413, 415–16 (1923) (holding that under the statutes in place at the time, an appeal from the
14 Indiana Supreme Court could be taken only to the United States Supreme Court, not to the United
15 States District Court, because the jurisdiction of the latter court was strictly original). Even
16 assuming that Congress could create appellate jurisdiction over state-court rulings in the United
17 States District Court, it has not done so.

18 Plaintiff brings the case under § 1983, but this Court has no statutory jurisdiction to
19 entertain *de facto* appeals of state trial court rulings any more than it has jurisdiction to entertain
20 formal appeals of such rulings. *See, e.g., Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 860 (9th
21 Cir. 2008). The issue here (whether Plaintiff’s conviction was proper if the police violated his
22 Fourth Amendment rights) must be litigated through the state courts because the issue is
23 “inextricably intertwined” with the state-court decision. *See Feldman*, 460 U.S. at 483 n. 16
24 (stating “If the constitutional claims presented to a United States District Court are inextricably
25 intertwined with the state court’s denial in a judicial proceeding of a particular plaintiff’s
26 application for admission to the state bar, then the District Court is in essence being called upon to
27 review the state court decision. This the District Court may not do.”); *Reusser*, 525 F.3d at 859.
28 Plaintiff’s § 1983 action cannot be used to collaterally attach a criminal conviction unless the

1 conviction or sentence has been reversed on direct appeal, expunged by executive order, declared
2 invalid by a state tribunal authorized to make such a determination, or called into question by a
3 federal court's issuance of a writ of habeas corpus. *See Heck v. Humphrey*, 512 U.S. 477, 484
4 (1994). Plaintiff has failed to indicate that his conviction was reversed on direct appeal, expunged
5 by executive order, declared invalid by a state tribunal authorized to make such a determination, or
6 called into question by a federal court's issuance of a writ of habeas corpus. The Court therefore
7 finds that Plaintiff failed to state a claim upon which relief can be granted.

8 Plaintiff's claim against John Parris must also be dismissed because Mr. Parris was not
9 acting under color of state law. To have a claim under § 1983, a plaintiff must plead that the
10 named defendant (1) acted "under color of state law" and (2) "deprived the plaintiff of rights
11 secured by the Constitution or federal statutes." *Gibson v. U.S.*, 781 F.2d 1334, 1338 (9th Cir.
12 1986); *see also West v. Atkins*, 487 U.S. 42, 48 (1988); *Long v. County of Los Angeles*, 442 F.3d
13 1178, 1185 (9th Cir. 2006). Plaintiff fails to indicate whether Mr. Parris was a public defender
14 appointed to represent him or if Mr. Parris was a private attorney retained to represent him. In
15 either case, however, Mr. Parris, acting in his capacity as an attorney, was not acting under the
16 color of state law. *See Georgia v. McCollum*, 505 U.S. 42, 53 (1992) (public defenders acting in
17 their role as advocate are not acting under color of state law); *see also Simmons v. Sacramento*
18 *County Superior Court*, 318 F.3d 1156, 1161 (9th Cir. 2003) (a lawyer in private practice does not
19 act under color of state law). Plaintiff therefore fails to state a claim upon which relief can be
20 granted against Mr. Parris.

21 As it appears amendment to this complaint would be futile, the Court will recommend
22 Plaintiff's complaint be dismissed with prejudice. Accordingly,

23 **IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed In Forma Pauperis is
24 **granted**. Plaintiff shall not be required to pay an initial partial filing fee. However, even if this
25 action is dismissed, the full filing fee must still be paid pursuant to 28 U.S.C. § 1915(b)(2).

26 **IT IS FURTHER ORDERED** that the movant herein is permitted to maintain this action
27 to conclusion without the necessity of prepayment of any additional fees or costs or the giving of
28 security therefor. This Order granting leave to proceed in forma pauperis shall not extend to the

1 issuance of subpoenas at government expense.

2 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915(b)(2), the Accounting
3 and Finance Department for the Clark County Detention Center shall pay to the Clerk of the United
4 States District Court, District of Nevada, 20% of the preceding month's deposits to Plaintiff's
5 account (inmate #432533), in the months that the account exceeds \$10.00, until the full \$350 filing
6 fee has been paid for this action. The Clerk of the Court shall send a copy of this Order to the
7 Finance Division of the Clerk's Office. The Clerk shall also send a copy of this Order to the
8 attention of the Accounting and Finance Department for the Clark County Detention Center, 330
9 South Casino Center, Las Vegas, Nevada 89101.

10
11 **RECOMMENDATION**

12 **IT IS HEREBY RECOMMENDED** that Plaintiff's Complaint is **dismissed** with
13 prejudice for failure to state a claim upon which relief can be granted.

14
15 **NOTICE**

16 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be
17 in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has
18 held that the courts of appeal may determine that an appeal has been waived due to the failure to
19 file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit
20 has also held that (1) failure to file objections within the specified time and (2) failure to properly
21 address and brief the objectionable issues waives the right to appeal the District Court's order
22 and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153,
23 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

24 DATED this 19th day of March, 2012.

25
26 
27 GEORGE FOLEY, JR.
28 United States Magistrate Judge